

BILL NO. S-82-02-21

SPECIAL ORDINANCE NO. S-

51-82

AN ORDINANCE approving a contract for Resolution Number 355-81, between the City of Fort Wayne, Indiana and T. & G. Excavating, Inc., for outfall structure repair.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That a certain contract, dated January 27, 1982, between the City of Fort Wayne, Indiana, by and through its Mayor and the Board of Public Works, and T. & G. Excavating, Inc., for:

the repair of two existing outfall structures. Outfall structure A is located on the south bank of the Maumee River approximately 75+ feet north of and 140+ feet east of the center of the intersection of Berry Street and Monroe Street. The repair consists of the removal and replacement of the existing sheeting, removal and replacement of a portion of the undermined spillway, and the placement of rip rap at the base of the structure. Outfall structure B is located on the west bank of the St. Mary's River approximately 160+ feet east of and 80+ feet south of the center of the intersection of Brown Street and Electric Avenue. This structure is the outfall for an existing pumping station. The repair consists of the placing of sheeting at the existing east edge of the spillway, filling the undermined void area with grout and the placement of rip rap at the base of the structure,

under Board of Public Works Resolution Number 355-81, at a total cost of \$72,891.33, all as more particularly set forth in said contract which is on file in the office of the Board of Public Works and is by reference incorporated herein and made a part hereof, be and the same is in all things hereby ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.


COUNCILMAN

APPROVED AS TO FORM AND
LEGALITY FEBRUARY 19, 1982


BRUCE O. BOXBERGER, CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Eisbart, and duly adopted, read the second time by title and referred to the Committee City of Fort Wayne (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, at _____ o'clock _____.M., E.S.T.

DATE: 2-23-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~lost~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>8</u>	<u> </u>	<u> </u>	<u>1</u>	<u> </u>
<u>BRADBURY</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>BURNS</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>EISBART</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>GIAQUINTA</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>NUCKOLS</u>	<u> </u>	<u> </u>	<u> </u>	<u>✓</u>	<u> </u>
<u>SCHMIDT</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHOMBURG</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>STIER</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>TALARICO</u>	<u>✓</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

DATE: 3-9-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. 5-51-82 on the 9th day of March, 1982.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of March, 1982, at the hour of 11:30 o'clock P..M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 17th day of March 1982, at the hour of 4 o'clock P..M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR

BILL NO. S-82-02-21

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN
ORDINANCE approving a contract for Resolution Number 355-81, between
the City of Fort Wayne, Indiana and T. & G. Excavating, Inc., for
outfall structure repair

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

PAUL M. BURNS - CHAIRMAN

MARK E. GIAQUINTA - VICE CHAIRMAN

JAMES S. STIER

JANET G. BRADBURY

ROY J. SCHOMBURG

3-9-82
CONCURRED IN
DATE CHARLES W. WESTERMAN, CITY CLERK

orig.
71-177-13
1/27/82
Contract No. 355-1981

Board Order No. 127-81

THIS CONTRACT made and entered into in triplicate this 27th day of January, 1983, by and between T-G Excavating, Inc. herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor, and the Board of Public Works herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the installation of the following:

Outfall Structure Repair Resolution No. 355-1981

all according to Fort Wayne Pollution Control Engineering Department Drawing No. SY-11084, Sheets 1 thru 2, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the unit price sum of \$72,891.33. In event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Engineering Department of the Owner, less the aggregate of previous payments, will be paid by Owner to the Contractor.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted thereupon, and the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of State of Indiana and Ordinances of City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bounded by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978, a copy of which Section is attached and incorporated herein and made a part hereof. (NE/1 - NE/3)

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Statutes of Indiana and Ordinances of City of Fort Wayne, attached hereto and made a part hereof. (WR/1).

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- A. Advertisement for Bids, for Contract No. 355-1981.
- B. Instructions to Bidders for Contract No. 355-1981.
- C. Contractor's Proposal Dated 12-16-81.
- D. Fort Wayne Water Pollution Control Engineering Department Construction Drawing No. SY-11084.
- E. General Specifications and Conditions, detailed specifications, construction standards for the installation of storm and sanitary sewers adopted July 23, 1980 and addendums thereof of the City of Fort Wayne's Water Pollution Control Engineering Department.
- F. Special Provisions.
- G. Workmen's Compensation Act Statutes of State of Indiana and Ordinances of City of Fort Wayne.
- H. Non Discrimination of labor General Ordinance No. G-34-78 (as amended).
- I. Prevailing wage scale.
- J. Performance Bond.
- K. Labor and Material Payment Bond.
- L. Comprehensive Liability Insurance Coverage.
- M. Application for Cut Permit.
- N. Escrow Agreement.
- O. Notice of Award.
- P. Notice to Proceed.
- Q. Change Order.
- R. Notice of Final Acceptance.

ARTICLE 9. GUARANTEE OF WORKMANSHIP

The Contractor shall warrant all materials, labor and equipment furnished and work performed for a period of one (1) year from date of final acceptance in writing by the Owner.

ARTICLE 10. INDEMNITY

Contractor shall furnish to owner, within ten (10) days of the date hereof a certificate from an insurer acceptable to owner showing personal injury and property damage. Insurance inforce issued in connection with the work to be done under this Contract in accordance with said Specifications of the City of Fort Wayne, Division I, Section 7.2.2. and special provision no. 4.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Pollution Control Department, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the within contract in 180 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BY: Thomas M. Stockamp
Thomas M. Stockamp, President

BY: George B. Merrill
Secretary

CITY OF FORT WAYNE, INDIANA

BY: Win Moses, Jr.
Win Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

R. J. Inouffer
ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS

Stephen A. Bailey
Stephen A. Bailey, Chairman

Roberta Anderson Staten
Roberta Anderson Staten, Member

Betty R. Collins
Betty Collins, Member

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 1982.

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

HOME OFFICE: BALTIMORE, MD.

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by C. M. PECOT, JR., Vice-President, and C. W. ROBBINS, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which reads as follows:

Sec. 2. The President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgments, decrees, mortgages and instruments in the nature of mortgages, and also all other instruments and documents which the business of the Company may require, and to affix the seal of the Company thereto.

does hereby nominate, constitute and appoint Walter H. Lupke, Jr., Duane E. Lupke, Donald L. Coffey, Edward B. Rice, Walter E. Boose, Lowell K. Zelt and Virginia T. Axson, all of Fort Wayne, Indiana, EACH..... its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings.....

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Walter H. Lupke, Jr., et al, dated, November 21, 1978.

The said Assistant Secretary does hereby certify that the foregoing is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 17th day of December, A.D. 1979.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



ATTEST:

C W Robbins

Assistant Secretary

By.....

C W Robbins
Vice-President

STATE OF MARYLAND
CITY OF BALTIMORE

} SS:

On this 17th day of December, A.D. 19 79, before the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and qualified, came the above-named Vice-President and Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Baltimore, the day and year first above written.



E. J. F. Folsom
Notary Public Commission Expires July 1, 1982

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2 of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 16th day of July, 1969.

RESOLVED: "That the facsimile or mechanically reproduced signature of any Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company, this

day of....., 1982.....

W. E. Boose
Assistant Secretary

Fidelity and Deposit Company

HOME OFFICE

OF MARYLAND

BALTIMORE, MD. 21203

Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That T & G Excavating, Inc., 5544 Huguenard Road,
(Here insert the name and address or legal title of the Contractor)
Fort Wayne, Indiana 46808
as Principal, hereinafter called Contractor, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, with its home office in the City of Baltimore, Maryland, U. S. A., as Surety, hereinafter called Surety, are held and firmly bound unto City of Fort Wayne, Board of
Public Works, City-County Building, 1 Main Street, Fort Wayne, Indiana 46802
(Here insert the name and address or legal title of the Owner)
as Obligees, hereinafter called Owner,
in the amount of Seventy Two Thousand Eight Hundred Ninety One Dollars and
Thirty Three Cents

Dollars (\$ 72,891.33), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated 19 ,
entered into a contract with Owner for Resolution #355-81, Outfall Structure Repair,
Fort Wayne, Indiana.

in accordance with drawings and specifications prepared by City of Fort Wayne, Indiana

(Here insert full name, title and address)
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of Owner.

Signed and sealed this 20th day of January A.D. 1982

In the presence of:

T. & G. Excavating, Inc. (SEAL)

Thomas M. Stockamp, Pres.
Principal
Title

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

Virginia T. Axson
Virginia T. Axson

By Duane E. Lupke (SEAL)
Duane E. Lupke (attorney-in-fact)

TITLE OF ORDINANCE Resolution 355-81 - Outfall Structure Repair

567 DEPARTMENT REQUESTING ORDINANCE Board Of Public Works

12-02-21

SYNOPSIS OF ORDINANCE Repair of two existing outfall structures. Outfall Structure A

is located on the south bank of the Maumee River approximately 75± feet north of and 140± feet east of the center of the intersection of Berry Street and Monroe Street.

The repair shall consist of the removal and replacement of the existing sheeting, removal and replacement of a portion of the undermined spillway, and the placement of rip rap at the base of the structure. Outfall Structure B is located on the west bank of the St. Mary's River approximately 160± feet east of and 80± feet south of the center of the intersection of Brown Street and Electric Avenue. This structure is the outfall for an existing pumping station. The repair shall consist of the placing of sheeting at the existing east edge of the spillway, filling the undermined void area with grout and the placement of rip rap at the base of the structure. Awarded to T & G Excavating, Inc.

"Prior Approval" received on 2-9-82.

EFFECT OF PASSAGE The above two structures can be repaired.

EFFECT OF NON-PASSAGE Further deterioration of structures.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$72,891.33

ASSIGNED TO COMMITTEE